

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

McKINNIS ARMSTRONG, FOR  
HIMSELF AND ON BEHALF OF  
HIS JUDICIALLY PLACED GRAND-  
DAUGHTER, KEANDRIA AUGUSTINE,  
AND CYNTHIA ARMSTRONG, WIFE  
OF McKINNIS ARMSTRONG,  
individually and on behalf of a class of  
persons similarly situated

CIVIL ACTION NO. 6:11-cv-01515

VERSUS

JUDGE WALTER

MULTI-CHEM GROUP, L.L.C.,  
AND XYZ INSURANCE COMPANY

MAGISTRATE JUDGE HANNA

**REPORT AND RECOMMENDATION**

The undersigned undertook a *sua sponte* review of jurisdiction in this action<sup>1</sup> and, for the reasons explained below, the undersigned finds that this Court lacks subject-matter jurisdiction over this action. Accordingly, the undersigned recommends that this matter be dismissed without prejudice.

---

<sup>1</sup> *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5<sup>th</sup> Cir. 1985) (“United States District Courts and Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction *sua sponte* if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking.”)

### **BACKGROUND INFORMATION**

This lawsuit arises out of an explosion and fire that occurred at defendant Multi-Chem Group, LLC's place of business in New Iberia, Louisiana on June 14, 2011. In their complaint, the plaintiffs allege that they were exposed to toxic, dangerous, and/or noxious chemicals released in the explosion and fire. They seek to recover damages from Multi-Chem for loss of property, loss of use of property, diminution of property value, stigmatization of property, displacement from property, medical illnesses, aggravation of existing illnesses, fear of illnesses, lost chance of survival, lost life expectancy, medical expenses, physical and mental pain and suffering, disability, disfigurement, and impairment.

The plaintiffs allege that this Court has jurisdiction over this action under 28 U.S.C. § 1332, which confers jurisdiction on civil actions when the parties are diverse and the amount in controversy exceeds \$75,000.00. The undersigned reviewed the pleadings to determine whether the requirements for diversity jurisdiction are satisfied. The undersigned found that the allegations of the plaintiffs' petition are insufficient to establish that the parties are diverse in citizenship (Rec. Doc. 44 at 2) and that the allegations of the plaintiffs' complaint are insufficient to establish that the amount in controversy exceeds \$75,000 (Rec. Doc. 44 at 5). The undersigned ordered the plaintiffs to submit a brief setting forth the facts supporting their

contention that this court has jurisdiction, specifically addressing the citizenship of the parties and the amount in controversy and supporting all relevant facts with summary-judgment-type evidence. (Rec. Doc. 44 at 5). The undersigned also permitted the defendants an opportunity to respond to the plaintiffs' briefing. (Rec. Doc. 44 at 5).

The plaintiffs complied with the undersigned's order and filed a responsive brief. (Rec. Doc. 45). In their brief, the plaintiffs stated that they "do not have any evidence at this time that any individual plaintiff's claim exceeds the sum of \$75,000" and admitted that they "cannot meet the requisite amount in controversy for purposes of diversity jurisdiction." (Rec. Doc. 45 at 1). The plaintiffs did not address the citizenship of the parties. The defendant also submitted a brief (Rec. Doc. 46), requesting that this action be dismissed based on the plaintiffs' representation that they have no evidence that any plaintiff's claim exceeds \$75,000.

### ANALYSIS

Federal district courts are courts of limited jurisdiction, possessing only the power authorized by the Constitution and by statute.<sup>2</sup> Accordingly, federal courts

---

<sup>2</sup> *Griffin v. Lee*, 621 F.3d 380, 388 (5<sup>th</sup> Cir. 2010); *Halmekangas v. State Farm Fire and Cas. Co.*, 603 F.3d 290, 292 (5<sup>th</sup> Cir. 2010).

have subject-matter jurisdiction only over civil actions presenting a federal question<sup>3</sup> and those in which the amount in controversy exceeds \$75,000 exclusive of interest and costs and the parties are citizens of different states.<sup>4</sup> The party invoking subject-matter jurisdiction in federal court has the burden of establishing the court's jurisdiction.<sup>5</sup> Therefore, the plaintiffs must bear that burden in this case. The undersigned finds, however, that the plaintiffs have not proven that the amount in controversy exceeds the jurisdictional minimum nor have they proven that the parties are diverse in citizenship. Accordingly, the undersigned finds that this Court lacks subject-matter jurisdiction and recommends that this action be dismissed without prejudice.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen days after being served with of a copy of any objections or responses to the district judge at the time of filing.

---

<sup>3</sup> 28 U.S.C. § 1331.

<sup>4</sup> 28 U.S.C. § 1332.

<sup>5</sup> *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5<sup>th</sup> Cir. 1998).

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in the report and recommendation within fourteen days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the district court, except upon grounds of plain error. See *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996).

Signed at Lafayette, Louisiana, this 16th day of July 2012.

A handwritten signature in black ink, appearing to read 'Patrick J. Hanna', written over a horizontal line.

PATRICK J. HANNA  
UNITED STATES MAGISTRATE JUDGE